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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE RURAL INDEPENDENTS

Poka-Lambro Telephone Cooperative, Inc., Chariton Valley Telephone Corporation, and Lackawaxen Telephone Company ("Rural Independents"), by their attorneys and pursuant to the Commission's Notice of Proposed Rule Making ("NPRM"), released August 11, 1994, submit the following comments.

Poka-Lambro is a wireline telephone cooperative wholly-owned by its subscribers. Poka-Lambro provides landline telephone service to rural parts of west central Texas. Chariton Valley Telephone Corporation is a wireline telephone company providing landline service to rural Missouri. Lackawaxen Telephone Company is a wireline telephone company providing landline telephone service to rural eastern Pennsylvania.

For reasons set forth below, Rural Independents support the Commission's tentative conclusion in this proceeding to eliminate Rule Section 90.603(c) which prohibits wireline telephone common carriers from holding Specialized Mobile Radio ("SMR") base station

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licenses.¹ Rural Independents further support the Commission's proposal to eliminate its prohibition on wireline eligibility for commercial licenses in the 220 MHz service. In support hereof, Rural Independents show the following:

I. The Concerns Underlying the Wireline Restriction Are No Longer Justified

As the Commission notes, the mobile services industry, including the SMR industry, has changed dramatically in the last twenty years with respect to competition and regulation.² In 1974, the Commission adopted the restriction on telephone company ownership of SMR facilities as a method of promoting competition in the SMR industry at a time when "mobile services were in their infancy and telecommunications were dominated by wireline carriers under the control of AT&T."³ The Commission intended that SMR licenses should be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline carriers to engage in discriminatory interconnection practices.⁴

Twelve years later, in response to several requests from wireline carriers for waiver of Section 90.603(c), the Commission

¹ See Second Report and Order in Docket No. 18262, 46 FCC 2d 752 (1974).

² NPRM at para. 15.

³ NPRM at para. 16.

⁴ NPRM at para. 5.

issued a Notice of Proposed Rule Making ("Notice"),⁵ proposing the elimination of this prohibition. In the Notice, the Commission tentatively concluded that its proposed action would: (1) allow further entry into the SMR market and would provide more efficient service to the public by enhancing competition (Notice at para. 6); (2) "create, to the maximum extent possible, an unregulated, competitive marketplace environment for the development of telecommunications by eliminating unnecessary regulations and policies" (Notice at paras. 3 and 7); and (3) enhance business opportunities for both small and large wireline companies as well as provide competition for small and large SMR licensees (Notice at para. 11). In 1992, the FCC determined that after six years its PR Docket No. 86-3 proceeding had become stale. It terminated the proceeding along with the existing conditional waivers,⁶ noting that the SMR industry had experienced tremendous growth in terms of both the number of SMR licensees and the amount of capital generated by SMR service providers, but stated that for the time being it would keep the wireline restriction in order to evaluate "the competitive potential of private land mobile service vis-a-vis common carrier land mobile providers."⁷

Rural Independents agree that the SMR industry changed dramatically over the past twenty years. The industry has

⁵ PR Docket No. 86-3, 51 Fed. Reg. 2910 (January 22, 1986).

⁶ Order, PR Docket No. 86-3, FCC 92-270, released July 15, 1992 ("Order") at para. 4.

⁷ Id.

experienced rapid growth, and SMR licensees have aggregated large channel blocks of spectrum and implemented advanced technologies to serve wide areas and increase efficient use of spectrum. Further, the regulatory climate has changed, and many former private radio services, including SMR, are now characterized as Commercial Mobile Radio Services.

Healthy competition has ensured that SMR spectrum is no longer available for licensing in most metropolitan markets for either small or large entrepreneurs. Many licensees compete to provide service in the larger markets. Available SMR service areas tend to be those that are rural in nature and, as history has demonstrated in the cellular, paging and wireless cable arenas, rural areas tend to go unserved unless service is provided by the local rural telephone company. But for this prohibition, Rural Independents and many other rural wireline telephone companies would provide SMR service to their subscribers. Accordingly, Rural Independents support the Commission's tentative conclusion that since its concerns underlying the wireline restriction no longer exist, the SMR wireline ban should be completely eliminated.

II. Wireline Entry Into SMR and 220 MHz Commercial Service Will Further Competition In The SMR Marketplace And Benefit SMR Service Subscribers

Repeal of the wireline ban will promote opportunities for additional entry of small entrepreneurs.⁸ Rural Independents agree with the Commission's assessment that the overwhelming majority of

⁸ NPRM at para. 23.

companies excluded from the SMR business by the wireline ban are small, rural telephone companies with capitalizations which are small as compared with many larger SMR service providers.⁹ As the Commission notes, elimination of the SMR wireline ban could, therefore, serve to further competition in the SMR marketplace by increasing the number of small business participants in the SMR service.¹⁰ Further, the entry of wireline telephone companies, especially small rural telephone companies, into SMR and 220 MHz commercial service will result in the provision of quality affordable service to rural subscribers nationwide.

The Commission has recognized the traditional role of wireline carriers in the mobile services marketplace in its Broadband and Narrowband PCS dockets, concluding that local exchange carriers' ("LECs") participation in the provision of PCS will produce significant economies of scope between wireline and PCS networks.¹¹ Participation by LECs will yield a wider array of PCS services at lower costs to consumers.¹² Rural Independents agree that these conclusions are equally applicable to wireline entry into SMR and 220 MHz commercial service. Increased competition in the SMR and 220 MHz services will serve the public interest by increasing the variety and quality of service provided while reducing the cost of service to SMR subscribers. Accordingly, Rural Independents

⁹ Id.

¹⁰ NPRM at para. 23.

¹¹ NPRM at para. 17.

¹² Id.

support the Commission's tentative conclusion that eliminating the ban on wireline entry into SMR and the commercial 220 MHz service will benefit the public interest.

III. Existing Accounting Safeguards Applicable To LECs Holding CMRS Licenses Are Sufficient To Protect Against Discriminatory Practices

While, according to the Commission, the wireline restrictions may have once served to eliminate incentives for LECs to practice either discrimination or cross-subsidization, other, less draconian regulatory safeguards exist to prevent wireline carriers from engaging in anti-competitive behavior. These safeguards, when combined with unfettered market entry, will ensure that the benefits of healthy competition accrue to the public.

Section 201 of the Communications Act requires a carrier to provide reasonable interconnection to any carrier requesting it. This requirement serves to prevent discrimination by LECs in their offering of interconnection to non-affiliated SMR service providers. In addition, under Section 332(c)(1)(B) of the Communications Act, as amended by the Omnibus Budget Reconciliation Act of 1993, common carriers must provide, upon reasonable request, interconnection to CMRS providers, including SMR and commercial 220 MHz licensees. In implementing these provisions, the Commission determined that LECs should provide reasonable interconnection to all CMRS providers in a manner that is consistent with its interconnections requirements for cellular service providers.

In addition to interconnection requirements which safeguard against discriminatory practices, the Commission notes that independent accounting safeguards exist to protect against cross-subsidization by wirelines providing SMR service.¹³ These accounting rules require cost-study LECs to separate the costs of regulated activities from nonregulated activities for federal accounting purposes. Since SMR and commercial 220 MHz licensees are defined as CMRS and, as such, are not rate-regulated, these accounting rules will prevent cross-subsidization.

The Commission is correct in concluding that its interconnection and accounting requirements will be sufficient to prevent LECs from engaging in unreasonable discrimination in interconnection and cross-subsidization upon wireline entry into the SMR and commercial 220 MHz services marketplace. Accordingly, no additional safeguards are necessary to ensure full and fair competition upon wireline carriers' entry into these service markets.

IV. Conclusion

The competitive, regulatory and legislative environment has changed dramatically since the FCC imposed the wireline prohibition in 1974. With Congress' enactment of the regulatory parity provisions contained in the Omnibus Budget Reconciliation Act of 1993, it is no longer practical or efficient for the Commission to

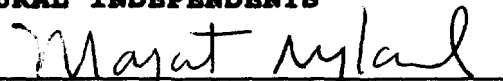
¹³ NPRM at para. 20.

maintain a competitive buffer to "protect" the SMR industry. Moreover, with personal communications services and other new competitive mobile services on the horizon, restricting competition among the SMR players not only creates an unlevel playing field, but also harms the public interest by preventing potential entrepreneurial wireline carriers from having the opportunity to create new and innovative services that could be beneficial to the public. Finally, Rural Independents support the Commission's conclusion that there are sufficient regulatory safeguards to prevent anti-competitive behavior by LECs upon their entry into the SMR market. Accordingly, Rural Independents concur with the Commission in its proposal to eliminate both the SMR wireline ban and the commercial 220 MHz wireline restriction.

Respectfully submitted,

THE RURAL INDEPENDENTS

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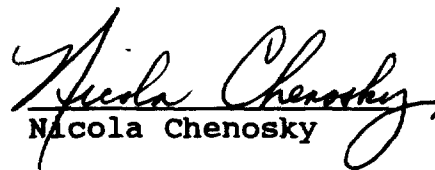
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October 5, 1994

CERTIFICATE OF SERVICE

I, Nicola Chenosky, of Kraskin & Associates, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing Comments the Rural Independents in Docket 94-90 was served on the 5th day of October, 1994, by hand delivery to the following:


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